

## APPENDIX Y

### A-E LIABILITY COLLECTION AND SETTLEMENT

#### 1. Collection of Claims.

a. The provisions of FAR 32.6, Contract Debts, and its supplements, apply to claims by the Government against A-E firms. These regulations arise from the Debt Collection Act of 1982.

b. A claim for payment of damages made in a demand letter to an A-E firm is not subject to the provisions of FAR 32.6 until a COD has been issued. When a COD is issued, the amount of the claim becomes a "receivable" and the handling of it shall be in accordance with the acquisition regulations. A copy of the COD shall be furnished to the local finance and accounting officer (FAO), with the following information:

(1) A-E firm's billing address, if different from the mailing address;

(2) A-E firm's employer identification number, if a U.S. Army contractor;

(3) Social security number of A-E firm's contracting officer;

(4) Contract number; and,

(5) Government KO's name and organization.

c. The A-E firm shall be notified in the COD that it may submit a request for deferment of collection (FAR 32.610(a)(3)). This is pertinent if the A-E firm has not been paid in full for the contract under which the liability action is being taken or has other active contracts, as the KO has authority to set off the claim against payments due the A-E firm. Requests for deferment by the A-E firm and the granting of deferments by the KO are covered in FAR 32.613.

d. The FAO shall be kept informed of the status of the resolution of a liability case and provided copies on all internal and external correspondence concerning the status of the claim. The AERC shall support and coordinate the actions of the KO and FAO to comply with the regulations cited above.

#### 2. Settlement Options.

a. Settlements can be made by cash payment, installment payments, or in-kind A-E services in some instances. The in-kind A-E services should be within the scope of the contract under which the liability action has been taken, but obviously can not be for corrective design. The value of settlements made by other than cash payments shall be estimated and be reported as the settlement amount in reports.

b. Installment settlements shall be reported as follows:

(1) The case shall be reported as settled upon receipt of the first payment.

(2) Subsequent payments will increase the amount of recoveries reported, but not the number of cases reported as settled.

(3) An ENG Form 4858A-R is required for each quarterly report until payment has been received in full.

(4) If the firm fails to complete payment, the case shall be referred to Counsel for collection.

#### 3. Disposition of Monies Recovered.

a. The AERC shall provide written guidance to the FAO for disposition of monies collected in liability case settlements. A copy of the disposition document shall be placed in the A-E contract file.

b. In general, the monies recovered in A-E liability actions are credited to the appropriation or account that bore the costs. This applies to project accounts, flat rate S&A accounts, and general and administrative overhead accounts. The amounts credited to these accounts cannot exceed the charges against them for the liability case.

c. In the cases where the costs associated with a liability case were borne by a customer's operations and maintenance account, the funds recovered shall be returned to the client without

EP 715-1-7  
31 May 99

regard to whether the return is made in the same year as the costs were incurred.

d. When the monies received cannot be credited to an account because the appropriation has expired, they shall be returned to the Treasury of the United States as miscellaneous receipts.